

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 99-0660P

Sales & Use Tax

Calendar Years 1995, 1996, 1997, 1998, & Short Year May 31, 1999

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the negligence penalty.

II. **Tax Administration** – Interest

Authority: IC 6.8-1-10.1

The taxpayer protests the interest assessment.

STATEMENT OF FACTS

The negligence penalty and interest were assessed on a sales and use tax assessment resulting from a Department audit conducted for the calendar years 1995, 1996, 1997, 1998 and short year May 31, 1999.

The taxpayer sells household appliances including refrigerators, washers, dryers, and ranges. The taxpayer also sells parts and accessories for the appliances. The taxpayer is located out-of-state and makes deliveries by company truck into Indiana.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer argues the negligence penalty should be waived as the taxpayer was unaware of how Indiana sales tax regulations pertained to sales to Indiana locations.

Furthermore, the taxpayer said the penalty should be waived as the error was unintentional.

45 IAC 15-11-2(b) states, “Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The Department finds the taxpayer was ignorant of tax duties. Ignorance is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.

II. Tax Administration – Interest

DISCUSSION

The taxpayer protests the interest assessed.

IC 6.8-1-10.1 does not allow the waiver of interest. As such, the Department finds the assessment of interest proper and denies the interest protest.

FINDING

The taxpayer's interest protest is denied.